

LAW OFFICES OF DALE K. GALIPO

Dale K. Galipo, Esq. (SBN 144074)
dalekgalipo@yahoo.com
Cooper Alison-Mayne (SBN 343169)
cmayne@galipolaw.com
21800 Burbank Boulevard, Suite 310
Woodland Hills, CA 91367
Phone: (818) 347-3333

LAW OFFICES OF DEAN PETRULAKIS

Dean Petrulakis, Esq. (Bar No. 192185)
1600 G Street, Suite 202
Modesto, CA 95354
Tel: (209) 522-6600

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DOROTHEY HEIMBACH,
individually and as successor in
interest to Anthony Silva,

Plaintiff,

vs.

STANISLAUS COUNTY; and
DOES 1–10, in their individual
capacities,

Defendants.

Case No. 2:23-cv-01887-DJC-KJN

FIRST AMENDED COMPLAINT

Federal Law Claims

1. Fourth Amendment, Unlawful Detention (42 U.S.C. § 1983)
2. Fourth Amendment, Excessive Force (42 U.S.C. § 1983)
3. Fourth Amendment, Denial of Medical Care (42 U.S.C. § 1983)
4. Municipal Liability, Unconstitutional Custom or Policy (42 U.S.C. § 1983)
5. Municipal Liability, Failure to Train (42 U.S.C. § 1983)
6. Municipal Liability – Ratification (42 U.S.C. § 1983)
7. Americans with Disabilities Act (42 U.S.C. § 12132)

State Law Claims

8. Battery
9. Negligence
10. Violation of Cal. Civil Code § 52.1

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR DAMAGES**

2 COME NOW Plaintiff Dorothee Heimbach for her Complaint against
3 Defendants Stanislaus County and Stanislaus Sheriff Deputies, Does 1–10, sued in
4 their individual capacities, alleging as follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and
7 1343(a)(3)-(4) because Plaintiff asserts claims arising under the laws of the United
8 States, including 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of
9 the United States Constitution.

10 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because
11 Defendants reside in this district and all incidents, events, and occurrences giving
12 rise to this action occurred in this district.

13 **INTRODUCTION**

14 3. On the afternoon of October 8, 2022, the ordinary life of Plaintiff
15 Dorothee Heimbach’s son, Anthony Silva, was catastrophically and irrevocably
16 shattered. From the peaceful setting of a public gazebo emerged an episode of gut-
17 wrenching brutality meted out by the very individuals entrusted with his protection:
18 deputies of the Stanislaus County Sheriff’s Department.

19 4. In an unjustified and excessive display of force, these deputies, whose
20 identities are yet to be ascertained, forcibly slammed Mr. Silva to the ground, head
21 first. This violent act caused severe cervical fractures at the C6 and C7 vertebrae.
22 These injuries rendered Mr. Silva quadriplegic. He died of the injuries one year
23 later, on September 10, 2023.

24 5. To add to the severity of their misconduct, the deputies, in clear
25 disregard for Mr. Silva’s visibly deteriorating condition, proceeded to move him
26 around—first lifting him from the ground to a park bench and later, from the bench
27 to a picnic table. Every shift, every jostle, every moment of delay in getting
28 professional medical help intensified Mr. Silva’s injuries, exacerbating the damage

1 to his cervical vertebrae and directly contributing to his quadriplegia and death.

2 6. These tragic events are a direct consequence of the deeply flawed
3 policies and practices at the Stanislaus County Sheriff's Department. The
4 department's inadequate and deficient training procedures have not only failed to
5 prevent such instances of excessive force, but also, the department has ratified the
6 unconstitutional conduct of their officers time and time again.

7 **PARTIES**

8 7. At all relevant times, Decedent Anthony Silva was an individual
9 residing in the City of Riverbank, California.

10 8. Plaintiff Dorothey Heimbach is an individual who was residing in
11 Riverbank, California. She is the natural mother of Mr. Silva; she sues under
12 federal and state law in her individual capacity and as successor-in-interest to Mr.
13 Silva. Plaintiff is Mr. Silva's successor-in-interest pursuant to California Code of
14 Civil Procedure §§377.30 and 377.60.

15 9. Stanislaus County is a political subdivision of the State of California,
16 and in doing the acts alleged was acting as such, rather than as an "arm of the state"
17 for Eleventh Amendment immunity purposes.

18 10. Stanislaus County is responsible for the actions, omissions, policies,
19 procedures, practices, and customs of its various agents and agencies, including the
20 Stanislaus County Sheriff's Department and its agents and employees. At all
21 relevant times, Stanislaus County was responsible for assuring that the actions,
22 omissions, policies, procedures, practices, and customs of the Stanislaus County
23 Sheriff's Department and its employees and agents complied with the laws of the
24 United States and of the State of California. At all relevant times, Stanislaus
25 County was the employer of Defendant Does 1–10 ("Defendant Does").

26 11. Defendant Does 1-6 ("Deputy Does") are deputy sheriffs working for
27 the Stanislaus County Sheriff's Department. At all relevant times, Doe Deputies
28 were acting under color of law within the course and scope of their duties as

1 sheriff's deputies for the Stanislaus County Sheriff's Department. The Deputy
2 Does were acting with the complete authority and ratification of their principal,
3 Stanislaus County.

4 12. Defendant Does 7–10 ("Supervisor Does") are managerial,
5 supervisory, and policymaking employees of the Stanislaus County Sheriff's
6 Department, who were acting under color of law within the course and scope of
7 their duties as managerial, supervisory, and policymaking employees for the
8 Stanislaus County Sheriff's Department. Supervisor Does were acting with the
9 complete authority and ratification of their principal, Stanislaus County.

10 13. On information and belief, the Defendant Does were residents of the
11 County of Stanislaus.

12 14. In doing the acts and failing and omitting to act as hereinafter
13 described, the Deputy Does were acting on the implied and actual permission and
14 consent of the Supervisor Does.

15 15. In doing the acts and failing and omitting to act as hereinafter
16 described, all Defendant Does were acting on the implied and actual permission
17 and consent of Stanislaus County.

18 16. The true names and capacities, whether individual, corporate,
19 association, or otherwise of Defendant Does are unknown to Plaintiff, who
20 otherwise would not sue these Defendants by such fictitious names. Plaintiff will
21 seek leave to amend her complaint to show the true names and capacities of these
22 Defendants when they have been ascertained. Each of the fictitiously-named
23 Defendants is responsible in some manner for the conduct or liabilities alleged
24 herein.

25 17. At all times mentioned herein, Defendant Does were the agents of
26 Stanislaus County. The Supervisor Does had the legal duty to oversee and
27 supervise the hiring, conduct, and employment of the Deputy Does.

28 18. All of the acts complained of herein by Plaintiff against Defendants

1 were done and performed by said Defendants. Stanislaus County and the
2 Supervisor Does acted by and through their authorized agents, servants, and/or
3 employees, all of whom at all relevant times herein were acting within the course,
4 purpose, and scope of said agency, service, and/or employment capacity. Moreover,
5 Stanislaus Count and the Supervisor Does and their agents ratified all of the acts
6 complained of herein.

7 19. Defendant Does are sued in their individual capacities.

8 20. On or around February 2, 2023, Mr. Silva filed comprehensive and
9 timely claims for damages with Stanislaus County pursuant to applicable sections
10 of the California Government Code.

11 21. On March 16, 2023, Stanislaus County rejected the claims.

12 22. Mr. Silva filed his timely complaint in this case on August 31, 2023.
13 (ECF No. 1.)

14 23. Shortly thereafter, on September 10, 2023, Mr. Silva died from his
15 injuries.

16 24. Plaintiff Dorothey Heimbach, Mr. Silva's mother, served her timely
17 claims for damages with Stanislaus County pursuant to applicable sections of the
18 California Government Code on October 6, 2023.

19 25. As of today, Plaintiff has not received a response to her claim. And
20 because it has been more than 45 days since service of the claim, the claim is
21 deemed rejected by operation of law and Plaintiff may file her complaint. Gov.
22 Code, § 945.6(a)(2).

23 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

24 26. On the afternoon of October 8, 2022, Decedent Anthony Silva's life
25 was irrevocably altered when Stanislaus County deputies unleashed a brutal
26 assault, leaving him quadriplegic and eventually causing his death on September
27 10, 2023.

28 27. Mr. Silva was outside the Riverbank Community Center at 3600 Santa

1 Fe Street, Riverbank, CA 95367, near a gazebo that is a public facility.

2 28. At the time of the incident, Mr. Silva was a 39-year-old man.

3 29. Mr. Silva is a high school graduate.

4 30. For several years before the incident, he had been experiencing
5 housing instability, and he was suffering from mental illness. The Deputy Does
6 were familiar with Mr. Silva, and they were aware that he suffered from mental
7 illness.

8 31. The Deputy Does surrounded Mr. Silva and began harassing him,
9 giving him orders and speaking to him aggressively despite the fact that Mr. Silva
10 had committed no crime, and had a right to be where he was, on public property.

11 32. The Deputy Does detained Mr. Silva without reasonable suspicion that
12 he had committed any crime.

13 33. At one point, one of the Deputy Does became angry and forcefully
14 slammed Mr. Silvato head-first into the ground.

15 34. The forceful takedown of Mr. Silva resulted in cervical fractures of his
16 C6 and C7 vertebrae. In layman's terms, Mr. Silva's neck was broken.

17 35. Due to his broken neck, Mr. Silva could not get back to his feet.

18 36. Although Mr. Silva was clearly suffering from a severe injury, the
19 Deputy Does did not promptly call paramedics.

20 37. Instead, as Mr. Silva lay on the ground, Defendants began to move his
21 injured body. First they moved him from the ground, sitting him upright at a park
22 bench. Then they moved him from the bench to a picnic table.

23 38. Moving Mr. Silva multiple times exacerbated his neck injury, resulting
24 in permanent quadriplegia.

25 39. The Deputy Does caused a delay in Mr. Silva's receipt of medical
26 care, despite the obvious and urgent need.

27 40. At all relevant times, Mr. Silva complied with the Deputy Does'
28 commands and did not resist arrest.

1 41. At all relevant times, the Deputy Does had no information that Mr.
2 Silva posed any threat of injury to anyone, nor did they have information that Mr.
3 Silva had actually injured anyone.

4 42. Mr. Silva had in fact, not hurt anyone at any relevant time.

5 43. At all relevant times, Defendant officers failed to warn Mr. Silva that
6 they would begin using force against him, despite it being feasible to do so, and
7 despite Mr. Silva's with the Deputy Does' commands.

8 44. At all relevant times, Mr. Silva posed no imminent threat of bodily
9 harm to the Deputy Does or anyone else.

10 45. At all relevant times, Mr. Silva made no verbal threats to any officer
11 or anyone else.

12 46. At all relevant times, the Deputy Does could observe that Mr. Silva
13 was unarmed and had no weapons in his possession.

14 47. At all relevant times, the Deputy Does had no information that Mr.
15 Silva had committed a crime unrelated to the alleged shoulder-check the officer
16 claimed to have experienced.

17 48. At all relevant times, the Deputy Does failed to make any effort to
18 ascertain whether Mr. Silva was suffering from a medical problem or crisis
19 requiring urgent treatment, as was obvious and in fact the case at the time.

20 49. At all relevant times, the Deputy Does failed to take steps to de-
21 escalate the situation or give Mr. Silva the opportunity to cooperate with their
22 instructions or comply with their orders prior to assaulting him.

23 50. As a result of the Deputy Does forceful takedown, restraint, and
24 subsequent movement of his injured body, Mr. Silva suffered significant injuries,
25 including a C6, C7 cervical fracture leading to permanent quadriplegia, skin
26 abrasions on his arms, and various complications including pneumonia in both
27 lower lobes of his lungs and blood clots.

28 51. Due to the injuries inflicted by the actions of the Deputy Does, Mr.

1 Silva was forced to undergo endotracheal intubation. This procedure involves
2 inserting a flexible plastic tube through the patient's mouth and into the windpipe,
3 which is then connected to a ventilator to assist in breathing. It's often required
4 when individuals are unable to breathe independently due to severe injury or
5 illness.

6 52. After suffering from his injuries for nearly a year, Mr. Silva died on
7 September 10, 2023. His death was caused by the Deputy Does' actions on August
8 8, 2023.

9 **FIRST CLAIM FOR RELIEF**

10 **Fourth Amendment, Unlawful Detention (42 U.S.C. § 1983)**

11 **Against Defendant Does 1–10**

12 53. Plaintiff repeats and realleges each and every allegation in the
13 foregoing paragraphs of this Complaint with the same force and effect as if fully set
14 forth herein.

15 54. The Deputy Does detained Mr. Silva without reasonable suspicion or
16 probable cause. At all relevant times, Defendant Does acted under color of state
17 law. The Deputy Does unreasonably seized Mr. Silva when they surrounded and
18 harassed him without reasonable suspicion that he had committed or was going to
19 commit any crime.

20 57. In addition, the scope and manner of the detention was unreasonable.
21 It was not necessary to use force against Mr. Silva. It was certainly not necessary to
22 slam him to the ground head-first, breaking his neck in two places. Moreover, it
23 was not necessary to apply force to Mr. Silva's body after he was laying on the
24 ground unable to move.

25 58. The conduct of the Deputy Does was done with reckless disregard for
26 the rights and safety of Mr. Silva and therefore warrants the imposition of
27 exemplary and punitive damages as to these defendants. As a direct result of the
28 unreasonable detention and arrest, Mr. Silva experienced severe pain and suffering

1 for which he is entitled to recover damages.

2 59. As a result of their misconduct, the Deputy Does are liable for Mr.
3 Silva's injuries and death, either because they were integral participants in the
4 wrongful detention and arrest, or because they failed to intervene to prevent these
5 violations.

6 60. The Supervisor Does were aware of Mr. Silva's status as an unhoused
7 individual suffering from mental illness. They were aware that Stanislaus Deputies,
8 including the Deputy Does, frequently detained Mr. Silva and similarly situated
9 individuals without reasonable suspicion. Their failure to properly supervise the
10 Deputy Does by instructing them to cease such unconstitutional behavior was a
11 contributing cause of Mr. Silva's injuries.

12 61. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
13 seeks wrongful death and punitive damages under this claim; survival damages
14 include pre-death pain and suffering damages.

15 62. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
16 42 U.S.C. § 1988.

17 **SECOND CLAIM FOR RELIEF**

18 **Fourth Amendment, Excessive Force (42 U.S.C. § 1983)**

19 **Against Defendant Does 1–10**

20 63. Plaintiff repeats and realleges each and every allegation in the
21 foregoing paragraphs of this Complaint with the same force and effect as if fully set
22 forth herein.

23 64. The Deputy Does use of force against Mr. Silva were excessive and
24 unreasonable under the circumstances. These Defendants encountered Mr. Silva
25 who may have been in the midst of a mental health crisis, and instead of providing
26 the assistance he needed, they detained and severely battered him. At the time of
27 the incident, Mr. Silva offered minimal resistance to the officers, made no attempt
28 to flee, and had committed no serious crime.

1 65. These Defendants' uses of force were further excessive in that Mr.
2 Silva never physically injured them or anyone else before or after the officers
3 assaulted him. Further, Mr. Silva never verbally threatened anyone, and never
4 brandished a weapon.

5 66. The unreasonable use of force by the Deputy Does deprived Mr. Silva
6 of his right to be secure in his person against unreasonable searches and seizures as
7 guaranteed to Mr. Silva under the Fourth Amendment to the United States
8 Constitution and applied to state actors by the Fourteenth Amendment.

9 67. As a result, Mr. Silva suffered severe pain and suffering death. The
10 Deputy Does are therefore liable to Plaintiff for compensatory damages under 42
11 U.S.C. § 1983.

12 68. As a result of the Deputy Does conduct, they are liable for Mr. Silva's
13 injuries, either because they were integral participants in the use of excessive force,
14 or because they failed to intervene to prevent these violations.

15 69. The conduct of the Deputy Does was willful, wanton, malicious, and
16 done with reckless disregard for the rights and safety of Mr. Silva and therefore
17 warrants the imposition of exemplary and punitive damages as to these Defendants.

18 70. The Supervisor Does were aware of Mr. Silva's status as an unhoused
19 individual suffering from mental illness. They were aware that Stanislaus Deputies,
20 including the Deputy Does, frequently used excessive force against individuals
21 similarly situated to Mr. Silva without justification. Their failure to properly
22 supervise the Deputy Does by instructing them to cease such unconstitutional
23 conduct was a contributing cause of their unconstitutional use of excessive force
24 and Mr. Silva's injuries.

25 71. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
26 seeks wrongful death and punitive damages under this claim; survival damages
27 include pre-death pain and suffering damages.

28 72. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to

42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

Fourth Amendment, Denial of Medical Care (42 U.S.C. § 1983)

Against Defendant Does 1–6

73. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth herein.

74. After slamming Mr. Silva head-first into the ground, breaking his neck in two places, the Deputy Does did not timely summon or provide medical attention to Mr. Silva.

75. After being taken to the ground, Mr. Silva could not get back to his feet because his neck was broken in two places.

76. Although Mr. Silva was clearly suffering from a severe injury, the Deputy Does did not promptly call paramedics.

77. Instead, as Mr. Silva lay on the ground, Defendants began to move his injured body. First they moved him from the ground, sitting him upright at a park bench. Then they moved him from the bench to a picnic table.

78. Moving Mr. Silva multiple times exacerbated his neck injury, resulting in permanent quadriplegia.

79. The Deputy Does therefore caused a delay in Mr. Silva's receipt of medical care, despite the obvious and urgent need.

80. The denial of medical care by the Deputy Does deprived Mr. Silva of his right to be secure in his persons against unreasonable searches and seizures as guaranteed to Mr. Silva under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

81. As a result, Mr. Silva suffered severe pain and suffering and death. The Deputy Does are therefore liable to Plaintiff for compensatory damages under 42 U.S.C. § 1983.

1 82. The Deputy Does knew that failure to provide timely medical
2 treatment to Mr. Silva could result in further significant injury or the unnecessary
3 and wanton infliction of pain, but disregarded that serious medical need,
4 exacerbating his pain and suffering.

5 83. The conduct of the Deputy Does was willful, wanton, malicious, and
6 done with reckless disregard for the rights and safety of Mr. Silva and therefore
7 warrants the imposition of exemplary and punitive damages as to these Defendants.

8 84. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
9 seeks wrongful death and punitive damages under this claim; survival damages
10 include pre-death pain and suffering damages.

11 85. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
12 42 U.S.C. § 1988.

13 **FOURTH CLAIM FOR RELIEF**

14 **Municipal Liability for Unconstitutional Custom or Policy (42 U.S.C. § 1983)**

15 **Against Stanislaus County**

16 86. Plaintiff repeats and realleges each and every allegation in the
17 foregoing paragraphs of this Complaint with the same force and effect as if fully set
18 forth herein.

19 87. As alleged above, the Deputy Does acted under color of state law, and
20 their acts deprived Mr. Silva of his particular rights under the United States
21 Constitution.

22 88. On information and belief, the Deputy Does were not disciplined,
23 reprimanded in connection with this incident.

24 89. The Deputy Does, together with other Stanislaus County policymakers
25 and supervisors, maintained, inter alia, the following unconstitutional customs,
26 practices, and policies:

- 27 i. Using excessive force, particularly by slamming individuals into
28 the ground head-first, causing potential harm and injury;

- ii. Providing inadequate training with respect to the handling of individuals, particularly in situations that could lead to head and neck injuries;
- iii. Providing inadequate training regarding the appropriate response to neck injuries;
- iv. Employing and retaining as deputy sheriffs individuals such as the Deputy Does, whom Stanislaus County at all times material herein knew or reasonably should have known had dangerous propensities for abusing their authority and for using excessive force, including head-first ground slams;
- v. Inadequately supervising, training, controlling, assigning, and disciplining deputies and other personnel, including the Deputy Does, whom Stanislaus County knew or in the exercise of reasonable care should have known had the aforementioned propensities and character traits;
- vi. Maintaining grossly inadequate procedures for reporting, supervising, investigating, reviewing, disciplining and controlling misconduct by Stanislaus County deputies, particularly in relation to incidents involving head-first ground slams and inappropriate handling of neck injuries;
- vii. Failing to adequately discipline Stanislaus County deputies for the above-referenced categories of misconduct, including inadequate responses to incidents of head-first ground slams and improper handling of neck injuries;
- viii. Determining that unjustified uses of force, including head-first ground slams and improper handling of neck injuries, are within policy;
- ix. Even though in similar circumstances, head-first ground slams

1 have been determined by courts to be unconstitutional,
2 Stanislaus County refuses to discipline, terminate, or retrain the
3 officers involved in such incidents;

4 x. Encouraging, accommodating, or facilitating a “blue code of
5 silence,” pursuant to which police officers do not report other
6 officers’ errors, misconduct, or crimes. Pursuant to this code of
7 silence, if questioned about an incident of misconduct involving
8 another officer, while following the code, the officer being
9 questioned will claim ignorance of the other officers’
10 wrongdoing; and

11 xi. Maintaining a policy of inaction and an attitude of indifference
12 towards soaring numbers of police use-of-force incidents,
13 including by failing to discipline, retrain, investigate, terminate,
14 and recommend officers for criminal prosecution who
15 participate in the use of force and restraint of unarmed people,
16 particularly in relation to incidents involving head-first ground
17 slams and improper handling of neck injuries.

18 90. The aforementioned acts and omissions caused Mr. Silva’s physical
19 injuries and death.

20 91. Stanislaus County, together with various other officials, whether
21 named or unnamed, had either actual or constructive knowledge of the deficient
22 policies, practices and customs alleged in the paragraphs above. Despite having
23 knowledge as stated above, these defendants condoned, tolerated and through
24 actions and inactions thereby ratified such policies. Said defendants also acted with
25 deliberate indifference to the foreseeable effects and consequences of these policies
26 with respect to the constitutional rights of Mr. Silva and other individuals similarly
27 situated.

28 92. By perpetrating, sanctioning, tolerating and ratifying the outrageous

1 conduct and other wrongful acts, Stanislaus officials acted with intentional,
2 reckless, and callous disregard for the constitutional rights of Mr. Silva.
3 Furthermore, the policies, practices, and customs implemented, maintained, and
4 still tolerated by Defendant County of Stanislaus were affirmatively linked to and
5 were a significantly influential force behind the Mr. Silva injuries and death.

6 93. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
7 seeks wrongful death and punitive damages under this claim; survival damages
8 include pre-death pain and suffering damages.

9 94. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
10 42 U.S.C. § 1988.

11 **FIFTH CLAIM FOR RELIEF**

12 **Municipal Liability – Failure to Train (42 U.S.C. § 1983)**

13 **Against Stanislaus County**

14 95. Plaintiff repeats and realleges each and every allegation in the
15 foregoing paragraphs of this Complaint with the same force and effect as if fully set
16 forth herein.

17 96. As alleged above, the Deputy Does acted under color of state law, and
18 their acts deprived Mr. Silva of his particular rights under the United States
19 Constitution.

20 97. The training policies of Stanislaus County were not adequate to train
21 its deputies to handle the usual and recurring situations with which they must deal.

22 98. Defendants Stanislaus County and Supervisor Does were deliberately
23 indifferent to the obvious consequences of its failure to train its deputies
24 adequately.

25 99. The failure of Defendants Stanislaus County and Supervisor Does to
26 provide adequate training caused the deprivation of the decedent's rights by the
27 Deputy Does; that is, the defendant's failure to train is so closely related to the
28 deprivation of the Mr. Silva's rights as to be the moving force that caused the

1 ultimate injury.

2 100. By reason of the aforementioned acts and omissions caused Mr. Silva
3 to suffer great physical harm and death.

4 101. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
5 seeks wrongful death and punitive damages under this claim; survival damages
6 include pre-death pain and suffering damages.

7 102. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
8 42 U.S.C. § 1988.

9 **SIXTH CLAIM FOR RELIEF**

10 **Municipal Liability – Ratification (42 U.S.C. § 1983)**

11 **Against Stanislaus County**

12 103. Plaintiff repeats and realleges each and every allegation in the
13 foregoing paragraphs of this Complaint with the same force and effect as if fully set
14 forth herein.

15 104. As alleged above, the Deputy Does acted under color of state law, and
16 their acts deprived Mr. Silva of his particular rights under the United States
17 Constitution.

18 105. Upon information and belief, a final policymaker, acting under color
19 of law, who had final policymaking authority concerning the acts of the Deputy
20 Does ratified (or will ratify) the acts of the Deputy Does and the bases for them.
21 Upon information and belief, the final policymaker knew of and specifically
22 approved of (or will specifically approve of) the acts of the Deputy Does.

23 106. Upon information and belief, a final policymaker has determined (or
24 will determine) that the acts of the Deputy Does were “within policy.”

25 107. On information and belief, the Deputy Does were not disciplined,
26 reprimanded, retrained, suspended, or otherwise penalized in connection with this
27 incident.

28 108. Accordingly, Stanislaus County is liable to Plaintiff for compensatory

1 damages under 42 U.S.C. § 1983.

2 109. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
3 seeks wrongful death and punitive damages under this claim; survival damages
4 include pre-death pain and suffering damages.

5 110. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
6 42 U.S.C. § 1988.

7 **SEVENTH CLAIM FOR RELIEF**

8 **Americans with Disabilities Act (42 U.S.C. § 12132)**

9 **Against Stanislaus County**

10 111. Plaintiff repeats and realleges each and every allegation in the
11 foregoing paragraphs of this Complaint with the same force and effect as if fully set
12 forth herein.

13 112. Mr. Silva was a "qualified individual," with a mental impairment that
14 substantially limited his ability to care for himself and control his mental, medical
15 or physical health condition as defined under the Americans with Disabilities Act
16 (ADA), 42 U.S.C. §12131 (2), and under Section 504 of the Rehabilitation Act of
17 1973, 29 U.S.C. §794.

18 113. Stanislaus County is a covered entity for purposes of enforcement of
19 the ADA, 42 U.S.C. §12131 (2), and under Section 504 of the Rehabilitation Act of
20 1973, explicated by the regulations promulgated under each of these laws.

21 114. Under the ADA, Stanislaus County is mandated to "develop an
22 effective, integrated, comprehensive system for the delivery of all services to
23 persons with mental disabilities and developmental disabilities. . ." and to ensure
24 "that the personal and civil rights" of persons are protected.

25 115. Congress enacted the ADA upon a finding, among other things, that
26 "society has tended to isolate and segregate individuals with disabilities" and that
27 such forms of discrimination continue to be a "serious and pervasive social
28 problems." 42 U.S.C. §12101(a)(2).

1 116. Stanislaus County is mandated under the ADA not to discriminate
2 against any qualified individual on the basis of disability in the full and equal
3 enjoyment of the goods, services, facilities, privileges, advantages, or
4 accommodations of any place of public accommodation." 42 U.S.C. §12182 (a).

5 117. Stanislaus County receives federal financial assistance for its Sheriff's
6 Office, and therefore must comply with the mandates of the Rehabilitation Act,
7 §504, which specifies that "program or activity" means all of the operations of a
8 department, agency, special purpose district, or other instrumentality of a State or
9 of a local government.

10 118. Stanislaus County and other Defendants violated the ADA and the
11 Rehabilitation Act, and deprived Mr. Silva of his federally and state protected
12 rights by: (1) failing to properly train its deputies, dispatch staff and/or employees
13 to peacefully respond, treat, and interact with disabled persons, such as Mr. Silva;
14 and (2) failing to comply with the U.S. Department of Justice requirements
15 regarding care, treatment and security to persons with mental disabilities, resulting
16 in discrimination against Mr. Silva, under the ADA and the Rehabilitation Act.

17 119. As a legal result of the acts and misconduct of the Defendants and
18 each Defendant complained of herein, Mr. Silva suffered pain and suffering and
19 eventual death.

20 120. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
21 seeks wrongful death and punitive damages under this claim; survival damages
22 include pre-death pain and suffering damages.

23 121. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
24 42 U.S.C. § 1988.

25 **EIGHTH CLAIM FOR RELIEF**

26 **False Arrest**

27 **Against All Defendants**

28 122. Plaintiff repeats and realleges each and every allegation in the

1 foregoing paragraphs of this Complaint with the same force and effect as if fully set
2 forth herein.

3 123. The Deputy Does intentionally deprived Mr. Silva of his freedom of
4 movement by use of force, threats of force, menace, fraud, deceit, and unreasonable
5 duress. The Deputy Does did not have reasonable suspicion that Mr. Silva was
6 engaged in any criminal activity, Mr. Silva was not engaged in any criminal
7 activity at any point during this incident, and he did not in any way interfere with
8 or obstruct the defendant officers' duties with respect to the incident. Mr. Silva did
9 not knowingly or voluntarily consent to being detained.

10 124. At the time of the unlawful detention of Mr. Silva, the Deputy Does
11 were working as Stanislaus County deputies and were acting within the course and
12 scope of their employment and duties.

13 125. As a result of their misconduct, the Deputy Does are liable for Mr.
14 Silva's injuries and death.

15 126. The Supervisor Does were aware of Mr. Silva's status as an unhoused
16 individual suffering from mental illness. They were aware that Stanislaus Deputies,
17 including the Deputy Does, frequently arrested individuals similarly situated to Mr.
18 Silva without probable cause. Their failure to properly supervise the Deputy Does
19 by instructing them to cease such conduct was a contributing cause of Mr. Silva's
20 injuries.

21 127. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
22 seeks wrongful death and punitive damages under this claim; survival damages
23 include pre-death pain and suffering damages.

24 128. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
25 42 U.S.C. § 1988.

NINTH CLAIM FOR RELIEF

Battery

Against All Defendants

129. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth herein.

130. Deputy Does physically assaulted Mr. Silva causing severe injuries including permanent quadriplegia.

131. Deputy Does use of force against Mr. Silva were excessive and unreasonable under the circumstances. These Defendants encountered Mr. Silva who may have been in the midst of a mental health crisis, and instead of providing the assistance he needed, they detained and severely battered him. At the time of the incident, Mr. Silva offered minimal resistance to the officers, made no attempt to flee, and had committed no serious crime.

132. The Deputy Does, while working for the Stanislaus County Sheriff's Department and acting within the course and scope of their duties, encountered Mr. Silva who may have been in the midst of a mental health crisis, and instead of providing the assistance he needed, they detained and severely physically assaulted him. At the time of the incident, Mr. Silva offered minimal resistance to the officers, made no attempt to flee, and had committed no serious crime.

133. The use of force and restraint against Mr. Silva was objectively unreasonable. At all relevant times, including when the Deputy Does slammed Mr. Silva to the ground, Mr. Silva did not pose a threat to anyone. Mr. Silva was offering minimal resistance, and had committed no crime. Additionally, Mr. Silva was unarmed during this incident.

134. As a result of the actions of the Deputy Does, Mr. Silva suffered severe injuries which eventually led to his death. The Deputy Does had no legal justification for using force against Mr. Silva, and their use of force while carrying

1 out their duties as a deputy sheriff was an unreasonable use of force.

2 135. As a direct and proximate result of the conduct of the Deputy Does as
3 alleged above, Mr. Silva suffered significant damages related to his physical and
4 injuries and death.

5 136. Stanislaus County is vicariously liable for the wrongful acts of the
6 Deputy Does pursuant to section 815.2(a) of the California Government Code,
7 which provides that a public entity is liable for the injuries caused by its employees
8 within the scope of the employment if the employee's act would subject her or her
9 to liability.

10 137. The Supervisor Does were aware of Mr. Silva's status as an unhoused
11 individual suffering from mental illness. They were aware that Stanislaus Deputies,
12 including the Deputy Does, frequently unjustifiably assault individuals similarly
13 situated to Mr. Silva. Their failure to properly supervise the Deputy Does by
14 instructing them to cease such conduct was a contributing cause of Mr. Silva's
15 injuries.

16 138. The conduct of the Deputy Does was malicious, wanton, oppressive,
17 and accomplished with a conscious disregard for the rights of Mr. Silva, entitling
18 him to an award of exemplary and punitive damages in addition to compensatory
19 damages.

20 139. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
21 seeks wrongful death and punitive damages under this claim; survival damages
22 include pre-death pain and suffering damages.

23 140. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
24 42 U.S.C. § 1988.

25 **TENTH CLAIM FOR RELIEF**

26 **Negligence (Wrongful Death and Survival)**

27 **Against All Defendants**

28 141. Plaintiff repeats and realleges each and every allegation in the

1 foregoing paragraphs of this Complaint with the same force and effect as if fully set
2 forth herein.

3 142. The Deputy Does have a duty to use reasonable care to prevent harm
4 or injury to others. This duty includes using appropriate tactics, giving appropriate
5 commands, giving warnings, and not using any force unless necessary, using less
6 than lethal options, and only using deadly force as a last resort.

7 143. The Deputy Does breached this duty of care. The actions and inactions
8 of the Deputy Does were negligent and reckless, including but not limited to:

- 9 i. Surrounding and harassing Mr. Silva without any reasonable
10 suspicion of a crime being committed.
- 11 ii. Speaking to Mr. Silva aggressively and giving him orders
12 despite his right to be on public property.
- 13 iii. Detaining Mr. Silva without any reasonable suspicion of a
14 crime.
- 15 iv. Forcefully slamming Mr. Silva head-first into the ground,
16 resulting in a broken neck.
- 17 v. Failing to promptly call paramedics despite Mr. Silva's obvious
18 severe injury.
- 19 vi. Moving Mr. Silva's injured body multiple times, exacerbating
20 his neck injury and resulting in permanent quadriplegia.
- 21 vii. Causing a delay in Mr. Silva's receipt of medical care, despite
22 the obvious and urgent need.

23 144. As a direct and proximate result of Defendants conduct as alleged
24 above, and other undiscovered negligent conduct, Mr. Silva was caused to suffer
25 severe pain and suffering and was rendered permanently quadriplegic.

26 145. Stanislaus County is vicariously liable for the wrongful acts of the
27 Deputy Does pursuant to section 815.2(a) of the California Government Code,
28 which provides that a public entity is liable for the injuries caused by its employees

1 within the scope of the employment if the employee's act would subject her or her
2 to liability.

3 146. The Supervisor Does were aware of Mr. Silva's status as an unhoused
4 individual suffering from mental illness. They were aware that Stanislaus Deputies,
5 including the Deputy Does, frequently unjustifiably assault individuals similarly
6 situated to Mr. Silva. They were negligent in their failure to properly supervise the
7 Deputy Does by instructing them to cease such conduct. And their negligence was
8 a contributing cause of the Deputy Does' actions and of Mr. Silva's injuries and
9 death.

10 147. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
11 seeks wrongful death and punitive damages under this claim; survival damages
12 include pre-death pain and suffering damages.

13 148. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
14 42 U.S.C. § 1988.

15 **ELEVENTH CLAIM FOR RELIEF**

16 **Intentional Infliction of Emotional Distress**

17 **Against All Defendants**

18 149. Plaintiff repeats and realleges each and every allegation in the
19 foregoing paragraphs of this Complaint with the same force and effect as if fully set
20 forth herein.

21 150. The conduct of the Deputy Does, as set forth herein, was extreme and
22 outrageous and beyond the scope of conduct which should be tolerated by citizens
23 in a democratic and civilized society.

24 151. Defendants committed these extreme and outrageous acts with the
25 intent to inflict severe mental and emotional distress upon Mr. Silva.

26 152. As a proximate result of Defendants' willful, intentional and malicious
27 conduct, Decedent suffered severe and extreme mental and emotional distress.

28 153. Plaintiff brings this claim as successors-in-interest to Mr. Silva and

1 seeks survival damages.

2 154. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
3 42 U.S.C. § 1988.

4 **TWELFTH CLAIM FOR RELIEF**

5 **Violation of Cal. Civil Code § 52.1**

6 **Against All Defendants**

7 155. Plaintiff repeats and realleges each and every allegation in the
8 foregoing paragraphs of this Complaint with the same force and effect as if fully set
9 forth herein.

10 156. California Civil Code, Section 52.1 (the Bane Act), prohibits any
11 person from using violent acts or threatening to commit violent acts in retaliation
12 against another person for exercising that person's constitutional rights.

13 157. On information and belief, the Deputy Does, while working for the
14 Stanislaus County and acting within the course and scope of their duties,
15 intentionally committed acts of violence against Mr. Silva, including breaking his
16 neck by slamming him to the ground head-first, all without justification or excuse,
17 or by integrally participating and failing to intervene in the above violence, and by
18 denying him necessary medical care. The Deputy Does' intent to violate Mr.
19 Silva's constitutional rights is demonstrated by their reckless disregard for Mr.
20 Silva's constitutional rights.

21 158. The Deputy Does' use of extreme force and subsequent mistreatment
22 of Mr. Silva's injured body interfered with his civil rights to be free from
23 unreasonable searches and seizures, and his right to medical care to mitigate caused
24 by the deputies use of force.

25 159. On information and belief, the Deputy Does intentionally and
26 spitefully committed the above acts to discourage Mr. Silva from exercising his
27 civil rights, to retaliate against him for invoking such rights, or to prevent him from
28 exercising such rights, which he was fully entitled to enjoy.

1 160. On information and belief, Mr. Silva reasonably believed and
2 understood that the violent acts committed by the Deputy Does were intended to
3 discourage him from exercising the above civil rights, to retaliate against him for
4 invoking such rights, or to prevent him from exercising such rights.

5 161. The conduct of the Deputy Does was a substantial factor in causing
6 Mr. Silva's harms, losses, injuries, and death.

7 162. Stanislaus County is vicariously liable for the wrongful acts of the
8 Deputy Does pursuant to section 815.2(a) of the California Government Code,
9 which provides that a public entity is liable for the injuries caused by its employees
10 within the scope of the employment if the employee's act would subject him or her
11 to liability.

12 163. The conduct of the Deputy Does was willful, wanton, malicious, and
13 done with reckless disregard for the rights and safety of Mr. Silva.

14 164. Plaintiff brings this claim as successors-in-interest to Mr. Silva and
15 seeks wrongful death and punitive damages under this claim; survival damages
16 include pre-death pain and suffering damages.

17 165. Plaintiff also seeks attorney's fees and costs for this claim, pursuant to
18 42 U.S.C. § 1988.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff Dorothea Heimbach requests entry of judgment in
21 her favor and against Defendants Stanislaus County and Stanislaus Sheriff
22 Deputies, Does 1–10, as follows:

- 23 1. For compensatory damages according to proof at trial, including:
24 survival damages, not limited to pre-death pain and suffering and loss life under
25 federal and state law; and wrongful death damages under federal and state law;
- 26 2. For funeral and burial expenses, and loss of financial support;
- 27 3. For loss of consortium;
- 28 4. For punitive and exemplary damages against Does 1-10

5. For statutory damages;
6. For reasonable attorneys' fees including litigation expenses;
7. For costs of suit and interest incurred; and
8. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: November 21, 2023

LAW OFFICES OF DALE K. GALIPO



Dale K. Galipo

Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: November 21, 2023

LAW OFFICES OF DALE K. GALIPO



Dale K. Galipo

Attorney for Plaintiff